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EXAMINER

PELHAM, JOSEPH MOORE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. ²⁰19

Application Number: 09/934,349
Filing Date: August 21, 2001
Appellant(s): MCGEE ET AL.

MAILED

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GROUP 3700

John D. Gugliotta
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 27, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows:

1. Does Vanselow anticipate claim 1 of the present invention?

With reference to the rejection of claim 1 under 35 USC 102(b) as being anticipated by Vanselow, the issue is not whether the Vanselow patent "*identically claim[s] and disclose[s] claims 1 of the present invention*" (sic, Examiner's emphasis), which Applicants' *counsel states and subsequently argues*. The condition stipulated by 35 USC 102(b) is that "the invention was patented or described in a printed publication

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in this or a foreign country cited prior art disclose the claimed subject matter," and not that the invention was claimed.

Moreover, the claims listed in "The Claims on Appeal" section of the Appeal Brief is incorrect. The listed claims are the claims as originally filed; the claims on appeal have been twice amended and are listed in Paper No. 13, Amendment C.

2. Are claims 2, 3, and 6 obvious over Vanselow in view of Stein?

The Examiner notes that Applicant's statement of the issues, whether the instant claims are "*anticipated as being obvious by*" the prior art of record, is more properly expressed as whether the claims would have been obvious to one of ordinary skill in the art at the time of the invention.

3. Is instant claim 4 obvious over Vanselow in view of Stein and further in view of Dan?

4. Is instant claim 5 obvious over Vanselow in view of Stein and further in view of Gordon?

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-6 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8). The Examiner notes that claim 6 appears to have been inadvertently omitted from the first group of claims, "claims 2, 3 and," at line 1 of Applicant's statement of the grouping of the claims.

(8) Claims Appealed

Claims 1, 2, and 5 contain substantial errors as presented in the Appendix to the brief. Accordingly, claims 1, 2, and 5 are correctly written in the Appendix to the Examiner's Answer.

(9) Prior Art of Record

6,075,229	VANSELOW	6-2000
6,072,161	STEIN	6-2000
6,121,585	DAM	9-2000
5,023,433	GORDON	6-1991

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6075229 to Vanselow.

Referring to Figures 1-4 and column 4, lines 36-47 especially, Vanselow discloses the invention as claimed, including a cup with a handle 30, lid 34, base 12 with an upwardly extending perimeter wall 20 that does not interfere with the handle, heating element 41 within the base 12, and 12 volt DC power plug 47 for use in an automobile.

Claims 2, 3, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vanselow in view of U.S. Patent 6072161 to Stein.

The Examiner firstly notes that Vanselow already discloses use of a "power plug" for use in an automobile, as recited in claim 3 (Fig. 1; col. 5, lines 5-10). The claims differ substantively from Vanselow, only in calling for thermal insulation for the heating element, as recited in claim 2. Referring to claim 6, the thermostat control (43) of Vanselow is continuously adjustable, providing in fact any "pair of set points," within the range of the device, selected by the user. It is noted as well that since claim 6 recites an apparatus that "comprises" a "thermostat...with a pair of set points," a device which provides this feature as a subset of more versatile control means also meets the limitation, as does Vanselow. Alternatively, if the claim were interpreted to recite two and only two set points, the Examiner gives notice that merely downgrading the control of Vanselow cannot be regarded to patentably distinguish the claimed invention from the prior art of record, since it would have been obvious to modify the temperature control of Vanselow to have only two settings to reduce the cost and simplify the device.

Referring to Figure 2 and column 2, line 61, through column 3, line 2, Stein discloses insulation (27) placed between a mug heating element and the exterior surface of the device. It would have been obvious to adapt the insulation of Stein to the heater of Vanselow to prevent excessive heating of external surfaces of the device, and thereby efficiently contain the energy generated by the heater, and enhance the comfort and protection of the user.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vanselow in view of Stein, as applied to claims 2, 3, and 6 immediately above, and further in view of U.S. Patent 6121585 to Dam.

Vanselow in fact already discloses a "power plug...capable of connecting to a power receptacle," as claimed; however, when interpreting claim 4 to be distinct from and to further limit claim 3 by virtue of intending that "power receptacle" should refer to an alternative power source, the heated drinking mug recited in claim 4 differs from that suggested by Vanselow in view of Stein in calling for a power plug capable of connecting to a power receptacle.. Dam discloses, in Figures 1-5 and column 8, lines 30-39, a heated drinking mug capable of connecting to an AC power receptacle, in the alternative to DC power. It would have been obvious to adapt the mug of Vanselow so as to also accommodate AC power, to allow its use where only AC power is available.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vanselow in view of Stein, as applied to claims 2, 3, and 6 immediately above, and further in view of U.S. Patent 5023433 to Gordon.

Vanselow discloses, at Fig. 2 and col. 4, lines 36-43, a heater (41) on the interior side of the mug holder (12, 20), but is silent regarding the details of heater 41. Gordon discloses a flexible heater for use in a device "into which a baby bottle may be placed..." for the purpose of heating the bottle (column 5, lines 41-43). It would therefore have been obvious to utilize a flexible heater in the mug warmer of Vanselow, such as the heater disclosed by Gordon, since Gordon discloses that beverage warming is an

appropriate application, and that flexible heaters are relatively inexpensive to manufacture.

(11) Response to Argument

The Examiner notes at the outset that Applicants' counsel has mistaken the requirement of 35 USC 102. It is not "a primary tenet that only the CLAIMED designs are to be compared," as asserted at page 5, lines 4-5, of the Brief.

This misinterpretation of statute initially appeared to explain Applicants' counsel's assertion that the Vanselow patent does not anticipate all of the features recited in claim 1 of the instant application; however, the features listed as "unanticipated" at page 5 of the Brief, lines 12-19, are *either claimed by Vanselow* (a lid, 12 volt DC power, i.e., auto battery, and heating element in the base), *or are not recited in the rejected claim* (use with a "standard drinking mug," a "power plug .. capable of connecting directly to a motor vehicle's power system," a "flexible resistive type heat element...to provide heat via direct mechanical communication to the standard containerized food vessel").

Applicant further identifies, at page 7, lines 7-10, an ostensibly patentable feature that is not disclosed or claimed: that the claimed invention heats a drinking mug "in a manner that flexibly retains the mug in firm mechanical contact." A flexible heating element is disclosed and recited in claim 5, but not heating means that "flexibly" retains the mug that is heated.

Applicant's arguments filed January 27, 2003, with respect to dependent claim 2-6, have been fully considered but they are not persuasive.

The instant Appeal Brief, as in papers 8, 9, and 13, again reiterates limitations which are asserted to be "unanticipated by Vanselow". The several case law citations again accompany unsupported assertions of patentability. Apart from stating that the prior art neither discloses nor suggests "heating a conventional drinking mug in a manner that flexibly retains the mug.." (page 7), which specific feature is not disclosed, Applicant's counsel has merely asserted a lack of anticipation or suggestion to combine the prior art teachings. Yet each of the "features" listed as "unanticipated" are either plainly and unambiguously disclosed by Vanselow, or immediately suggested by Vanselow in view of the balance of cited prior art. The examiner will address these as they are listed in the Brief (page 5):

1. "a lid"

Vanselow discloses a lid (34).

2. "A heating elements retained within a base AND powered by 12 volts DC;"

Vanselow discloses a heating element (41) in a base (12, 20) and 12 volt DC power supply capability (47).

3. "The ability to use the base with a standard drinking mug" (claim 2)

Claim 1 recites only "a cup with handle;" hence the issue of a "standard drinking mug" is not germane.

Claim 2 recites "a generally standard drinking vessel," which does not exclude the coffee cup of Vanselow, since Vanselow does not distinguish the cup beyond its identification as suitable for coffee. Moreover, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." In re Prater, 162 USPQ 541, 550 - 51 (CCPA 1969). See also In re Van Geuns (CA FC) 26 USPQ2d 1057; although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. The instant specification identifies the invention variously as "an improved coffee mug capable of being electrically heated" and a "generally standard drinking vessel." Vanselow discloses "a new cup warmer holder for keeping beverages, such as coffee, hot," and the vessel itself as merely "a cup," imposing otherwise no special definition on the cup.

Vanselow thus implicates no special structure for the cup to be heated, and furthermore anticipates "variations in size,...shape, form..." for the parts of the invention (col. 5, lines 18-21), hence for the cup/mug of the invention, which must therefore be regarded to implicate a "generally standard drinking vessel."

4. "a power plug is capable of connecting directly to a motor vehicle's power system" (claim 3).

The 12 volt DC adapter of Vanselow allows exactly this. If Applicant contemplates the ability to permanently connect the device of Vanselow to the motor vehicle electrical system, the power line of Vanselow is certainly capable of being so implemented

5. "a flexible resistive type heater... on the interior side of the ...holder" (claim 5).

Vanselow discloses a heater on the interior side of the holder but is silent about the type of heater. Newly cited Gordon discloses a flexible resistive type heater to have been conventional in the art at the time of the invention

Vanselow describes "heating an item within the central bore 23 of the receiving member 20" (column 4, lines 37-39). The Examiner again urges Applicant to review Figure 2 and column 4, lines 41-43. Vanselow discloses a heating element 41 on the inner surface of base 12; Applicant's heater 50 is described in a precisely equivalent manner to reside in a receiving member (the "coffee mug holder 15") having a central bore: "on the interior side of the coffee mug holder 15," according to the disclosure at page 6, lines 8-11.

At page 6 of the Brief, applicant asserts a lack of suggestion or affirmative teaching to apply the cited patents in combination. Stein, however, shows the use of insulation in a portable heated beverage container, and teaches the explicit advantage of keeping the outer surface cool. Gordon discloses the appropriateness of utilizing a flexible heater to heat a beverage container, and because Vanselow leaves heater selection entirely to the discretion of the artisan, the heater of Gordon would be among those considered as a matter of course, commended specifically by its economy, being relatively inexpensive to manufacture, and size.

For the above reasons, it is believed that the rejections should be sustained.

Appendix

Corrected claims 1, 2, and 5:

Claim 1. A heated coffee mug comprising:

a cup with a handle extending laterally outward from a perimeter sidewall and forming an upper opening orifice;

a lid for affixing to said cup to enclose said upper opening orifice;

a base for receiving said cup and provide stability on a horizontal surface, said base circumscribing a bottom of said cup by a perimeter wall extending upward from said base of a sufficient distance to prevent sliding of said cup from said base, said perimeter wall being of limited height such as not to interfere with said handle; and

a heating element retained within said base, said heating element powered by 12 volts DC as provided by a motor vehicle to maintain the hot temperature of the contents of said cup.

Claim 2. A heated coffee mug apparatus comprising:

a generally standard drinking vessel;

a mug holder for surrounding and providing firm mechanical communication with said drinking vessel, said mug holder having a base having a flat lower surface for resting upon a horizontal surface;

a heating element located within said mug holder;

an insulating media, said insulating media directing heat generated by said heating element to said drinking vessel, said insulating media further protecting a user from direct contact with high temperatures; and

a power cord electrically coupled with a power plug and in electrical communication with said heating element.

Claim 5. The heated coffee mug apparatus of Claim 2, wherein said heating element further comprises a flexible resistive type heat element located on the interior side of the coffee mug holder, to provide heat via direct mechanical communication to said drinking vessel.

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Respectfully submitted,



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May 13, 2004

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